IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

CRL.A.No. 771 of 2002(C)

S.T.NO.2802/1999 IN THE FILE OF JFCM-II, THRISSUR

APPELLANT: COMPLAINANT:

V.K.BALAKRISHNAN, S/O. KOCHAKKAN,
VALIYAPARAMBIL HOUSE, CHIYYARAM VILLAGE,
KANNAMKULANGARA DESOM.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: ACCUSED AND STATE:
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1. P.BABURAJ, S/O. DEVAKI AMMA,
PALLIYIL HOUSE, SEETHARAM QUARTERS, CLARIKARA,
P.O.PULLAZHY, THRISSUR.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.DILIP J. AKKARA
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.771 of 2002-C

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Dated this the 4th day of September, 2007

J U D G M E N T

The appellant is the complainant in S.T.No.2802/1999 in the file of the Judicial Magistrate of the First Class-II, Thrissur, with respect to the proceedings initiated under Section 138 of the Negotiable Instruments Act, on the allegation that the accused/respondent borrowed a sum of Rs.60,000/- from the complainant/appellant on 11/05/1998 and towards discharge of the above liability, the impugned cheque was issued, which when presented got dishonoured for want of funds in the account of the accused. The trial court after considering the evidence adduced in the matter that consisted of the testimony of PW1, Exts.P1 to P6 and that of DWs.1 and 2, held that the complainant could not establish the allegations and acquitted the accused.

2. As stated above, it is the case of the complainant that the accused borrowed a sum of Rs.60,000/- from the complainant and it was towards the discharge of the above liability that the impugned cheque was issued. On the other hand, it is the case set up by the defence that the accused was only a surety to a kuri transaction of

which his sister was a subscriber and that when the bid amount of kuri was given to her he had issued a signed blank cheque as security. It was brought out that the complainant was the Managing Partner of the chitty company by name 'Pushpa Kuries'. PW.1 has admitted that the sister of the accused was a subscriber to the kuri and that he had instituted criminal proceedings against the accused and his sister on the same day. PW.1 has not denied the suggestion that the accused was surety to his sister. It has also been brought out that the above chitty company is no longer in existence. DW.1, the sister of the accused has also testified as to the fact that the impugned cheque was issued as blank by the accused as surety to her when she received the chitty amount. She has also stated that the proceedings initiated against her by the complainant ended in acquittal. DW.2,who was one of the Directors of the Pushpa Kuries has denied the version of PW.1 that he is in possession of the documents in this regard.

3. I find that in the light of the specific denial by the accused as to the nature of the transaction involved and in view of the fact that the complainant has admitted that he was running chitty transactions, just admission of the signature in the impugned cheque would not attract

the offence under Section 138 of the Negotiable Instruments Act. As found by the court below, the case of the complainant that the transaction was only in the nature of a loan appears to be far from true. The contention of the appellant that since the accused has admitted the signature the statutory presumptions are attracted, cannot be upheld. I find that the complainant has failed to establish beyond reasonable doubt the guilt of the accused. Hence, there is no ground to interfere. The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.771 of 2002-C

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J U D G M E N T

4th September, 2007